

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA HUSSEIN,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 4:14-cv-1410 JAR
)	
COUNTY OF ST. LOUIS, MISSOURI; CITY)	
OF FERGUSON, MISSOURI; AND)	
RONALD K. REPLOGLE,)	
)	
Defendants.)	

***CITY OF FERGUSON'S RESPONSE TO JOINT MOTION OF
PLAINTIFF AND MOVANTS FOR EVIDENTIARY HEARING***

COMES NOW Defendant, City of Ferguson, by and through its attorneys for its Response to the Joint Motion of Plaintiff and Movants for Evidentiary Hearing (Doc. No. 82) and pursuant to the Court's Order of February 26, 2016 (Doc. No. 84) and states and as follows:

1. On November 21, 2014, this Court entered its Order by Consent (Do. No. 39) which is the basis of the Movants' Motion for Show Cause Order (Doc. No. 73), filed January 22, 2016.
2. On January 29, 2016, Defendant filed a response (Doc. No. 74) outlining several bases as to why the Movants' Motion for Show Cause should be denied, or in the alternative, stayed.
3. On February 8, 2016, the Movants filed their Reply (Doc. No. 77) and the next day, the original Plaintiff in this matter filed a Response (Doc. No. 79).

4. In their Motion for Evidentiary Hearing (Doc. No. 84), Movants and the Plaintiff cite to the Plaintiff's Motion for Show Cause filed on March 6, 2015 (Doc. No. 41).
5. The Plaintiff based his Motion on the March 4, 2015, report of the United States Department of Justice ("DOJ") and specifically referenced events occurring on February 9, 2015. (*See* pg. 6 of Doc. No. 41).
6. The Plaintiff based his entire Motion on the March, 4, 2015, report stating "Based on the findings of the United States Department of Justice, Ferguson has failed to comply with this Court's order." *See* pgs. 6-7 of Doc. No. 41.
7. The Plaintiff further stated "Here, it appears based on the DOJ Report that, on February 9, 2015, Ferguson police officers engaged in activity that is prohibited by the consent judgment." *See* pg. 7 of Doc. No. 41.
8. The Movants identify this incident as the basis for their Motion for Show Cause and the basis for their Complaint in Case No. 4:16-cv-00084. *See* ¶ 123 of Plaintiffs' Complaint, Doc. No. 1.
9. The City of Ferguson filed a Response (Doc. No. 43) outlining that it intended to engage its officers in additional training regarding activities protected by the First Amended (*See* ¶ 3). The City of Ferguson also argued that the Plaintiff had not proved its allegations by clear and convincing evidence. *See* ¶ 5.
10. Plaintiff filed a Reply (Doc. No. 44), alleging that the March 4, 2015, report was sufficient evidence to meet its burden. *See* ¶1. Plaintiff also filed supplemental information including affidavits. Doc. Nos. 45, 45-1, 45-2, 45-3.
11. On April 27, 2015, this Court ordered the City of Ferguson to show cause in writing why the matter should not be set for hearing. Doc. No. 52.

12. On May 5, 2015, the City of Ferguson filed a Response to the Court's Order (Doc. No. 53) and an affidavit in support (Doc. No. 53-1).
13. Thereafter, the City of Ferguson was not held in contempt.
14. More recently, Movant, Cachet Currie, filed a Motion for Show Cause (Doc. No. 60); however, the Court recently granted her Motion to Withdraw the Motion (Doc. No. 83).
15. The matter of whether the City of Ferguson is in contempt of this Court's Order has already been addressed by the parties and by this Court, as more fully described above. The Court did not find the City of Ferguson to be in contempt. Therefore, the request for an evidentiary hearing is moot.
16. Further, the Plaintiff and Movants have not indicated they possess new material evidence to support their requested relief of a finding of contempt, and merely rely on the cumulative alleged evidence contained in the Motions already filed with this Court. Therefore, an evidentiary hearing is not required. See *Hawkins v. Dep't of Health & Human Servs. for New Hampshire, Com'r*, 665 F.3d 25, 35-36 (1st Cir. 2012) ("Where the moving party fails to indicate that it possesses new material evidence that it wishes to present to the court, an evidentiary hearing is not required.").

WHEREFORE, the City of Ferguson respectfully requests this Court deny the Joint Motion of the Plaintiff and Movants for Evidentiary Hearing and deny their Motion for Show Cause.

/s/ Peter J. Dunne

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I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 7th day of March, 2016, to be served by operation of the Court's electronic filing system upon the following or U.S. mail for parties not registered with CM/ECF.

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